

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:19CR04
(Judge Keeley)

JAMES G. MOORE, JR.,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE AND
RECOMMENDING MOTIONS TO SUPPRESS BE DENIED (DKT. NO. 44),
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING

On August 26, 2019, the defendant, James G. Moore, Jr. ("Moore"), appeared before United States Magistrate Judge Michael J. Aloi and moved for permission to enter a plea of GUILTY to Count Two of the Superseding Indictment. After Moore stated that he understood that the magistrate judge is not a United States district judge, he consented to tendering his plea before the magistrate judge. Previously, this Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Moore's statements during the plea hearing and the testimony of Heather Kozik, Special Agent, Bureau of Alcohol, Tobacco, Firearms, and Explosives, the magistrate judge found that

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Moore was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On August 27, 2019, the magistrate judge entered a Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 44) finding a factual basis for the plea and recommending that this Court accept Moore's plea of guilty to Count Two of the Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R concerning Moore's plea of guilty, **ACCEPTS** Moore's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count Two of the Indictment.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it

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ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer shall undertake a presentence investigation of Moore, and prepare a presentence report for the Court;

2. The Government and Moore shall provide their versions of the offense to the probation officer by **September 23, 2019**;

3. The presentence report shall be disclosed to Moore, defense counsel, and the United States on or before **November 22, 2019**; however, the Probation Officer shall not disclose any sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **December 13, 2019**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **December 23, 2019**; and

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE AND
RECOMMENDING MOTIONS TO SUPPRESS BE DENIED (DKT. NO. 44),
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the factual basis from the statements or motions, on or before **December 23, 2019**.

The magistrate judge remanded Moore to the custody of the United States Marshal Service.

The Court will conduct the sentencing hearing for the defendant on **January 28, 2020, at 1:00 P.M.** at the **Clarksburg, West Virginia** point of holding court.

Following Moore's guilty plea, counsel for Moore orally moved to withdraw the pending motions to suppress (Dkt. Nos. 22, 23). The government did not object to the oral motion to withdraw. The magistrate judge therefore included in his R&R the recommendation that this Court grant the oral motion to withdraw the motions to suppress and deny the motions to suppress as moot. Accordingly, this Court **ADOPTS** the magistrate judge's R&R concerning Moore's motion to withdraw the motions to suppress, **GRANTS** the oral motion to withdraw the motions to suppress, and **DENIES AS MOOT** the motions to suppress.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE AND
RECOMMENDING MOTIONS TO SUPPRESS BE DENIED (DKT. NO. 44),
ACCEPTING GUILTY PLEA, AND SCHEDULING SENTENCING HEARING**

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: September 12, 2019

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE